

AO 1982-3/14

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Advisory Opinion
Obligation of Professional Continuity Committee
Volunteer to Report Suspected Code Violations

January 11, 1983

ADVISORY OPINION

ETHICS COMMITTEE ADVISORY OPINION: #1982-3/14

January 11, 1983

March 14, 1982

Reviewed by Board of Governors January 27, 1983

QUESTION

The New Hampshire Bar Association has established through the Professional Continuity Committee a program to interview, counsel and refer lawyers who suffer from drug or alcohol abuse, lack of management or administrative skills and techniques, mental illness or temporary disability or other disorders which prevent them from completing or adequately fulfilling their roles as counselors and advocates. In the course of such counseling and referral efforts, lawyers to whom these services are rendered may divulge to committee members, or resource person within the bar, information establishing or tending to establish instances of their professional misconduct stemming from foregoing disorders.

Under the circumstances stated, are the committee members and resource personnel within the association obligated to report such information to a tribunal, the Professional Conduct Committee or other authorities empowered to investigate or act upon the misconduct?

RESPONSE

DR 1-103 (A) requires that a lawyer possessing unprivileged knowledge of attorney misconduct as defined in DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation. The Code of Professional Responsibility creates no privilege nor condones any confidential relationship between lawyers which might exempt rehabilitative committee members. A privileged relationship within the meaning of DR 1-103 (A) must arise only by statute or through common law. Unless a recognized confidential relationship is established between the rehabilitative committee member and troubled attorney, the committee member is required to make disclosure.

The committee has reviewed Opinion #531 of the New York State Bar Association Committee on Professional Ethics and the other materials supplied by the Continuity Committee. As stated by the New York Committee, proposals such as the one presented here are designed to promote and maintain the integrity and competence of the legal profession. See Canon 1. The committee strongly supports the goals of the Rehabilitative Committee, but is constrained by the plain language of DR 1-103 as presently worded.

Although not addressed in the question presented, the committee is also concerned with the potential for conflict with DR 9-101. If, for example, serious professional misconduct were not reported by a member of the proposed committee and no other corrective action were taken because of an official privilege vested within the committee, such a scenario might evoke public concern over the propriety of the nondisclosure.

Absent amendment of DR 1-103 (A) or an officially granted exemption sanctioned by the New Hampshire Supreme Court, rehabilitative committee members are obligated to report DR 1-102 violations as are all members of the New Hampshire Bar.